Sprint
Together with NEXTEL

Sprint Nextel
2001 Edmund Halley Drive
Reston, VA 20191
Office: (703) 592-5112 Fax: (703) 433-4804

Michael B. Fingerhut
Director
Government Affairs

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Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Ex Parte* Notice: *Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities* – CG Docket No. 03-123

Dear Ms. Dortch:

On June 26, 2007, Michael Fingerhut of Sprint Nextel Corporation ("Sprint Nextel"); Jeff Rosen of Snap Telecommunications, Inc. ("Snap") and Frank Buono of Willkie Farr & Gallagher LLP, counsel for Snap; and Ruth Milkman and Richard Metzger of Lawler, Metzger, Milkman & Keeney, LLC, counsel for Sorenson Communications, Inc. ("Sorenson"), met with Cathy Seidel and Nicole McGinnis of the FCC's Consumer & Governmental Affairs Bureau to discuss issues raised in the above-referenced proceeding. Mike Maddix of Sorenson participated in the meeting by telephone.

During the meeting, the parties noted that in the pending rulemaking proceeding concerning the ratemaking methodology for video relay service ("VRS"), Snap, Sorenson, and Sprint Nextel have supported a price-cap approach. Under that approach, the Commission would set an initial unitary rate at the outset of a three-year period at the current rate (which today is $6.64), adjust the rate downward annually to reflect a consumer productivity dividend of 0.5 percent (0.005), and allow VRS providers to seek exogenous treatment for costs that they are required to incur during the three-year period that are beyond their control and not reflected in the Gross Domestic Product – Producer Index (GDP-PI) measure of inflation. Snap, Sorenson, and Sprint Nextel continue to believe that this approach is superior to other proposals that have been advanced in this proceeding.

The parties, however, noted that they are also aware of recent proposals in this proceeding for establishing a tiered approach to the rate structure for VRS compensation. Because most of the costs of providing VRS are expenses (particularly the costs of compensating interpreters) that increase as traffic volumes increase, Snap, Sorenson, and Sprint Nextel do not believe that a tiered rate structure with substantial differences between each successive rate level can be justified on the theory that increased VRS volumes will produce substantial economies of scale. Further, wide differences in the rate levels will create perverse incentives that could discourage providers from continuing to expand the there likely are some economies of scale that can be realized as volume levels grow.[1] Moreover, Snap, Sorenson, and Sprint Nextel understand that a tiered rate structure may advance other Commission public interest goals, such as encouraging new entry by providing a higher compensation rate at the first-level tier.

Snap, Sorenson, and Sprint Nextel stated during the meeting that if the Commission decided to adopt a tiered rate structure for VRS, beginning in July 2007, it should implement the three-year, three-level plan described below. The rate for the first level would be set at \$6.77 and apply to the first 50,000 minutes handled by each VRS provider during a calendar month. The rate for the second level would be set at \$6.50 and apply to minutes between 50,001 up to and including 500,000 handled by each VRS provider during a calendar month. The rate for the third level would be set at \$6.30 and apply to minutes in excess of 500,000 handled by each VRS provider during a calendar month.

The initial level of \$6.77 equals the rate that NECA reported as the weighted average compensable cost per minute forecasted by VRS providers for the 2007-08 rate year in their submissions earlier this year. The three parties recognize that the estimated per-minute costs of new entrants and the smallest VRS providers are likely to be higher than the industry weighted average. In light of the efficiency incentives created by the proposed three-year plan, however, we believe that it is reasonable to set the rate for the initial tier at the level of the weighted industry average.

The second level rate of \$6.50 was determined by first excluding from the initial rate industry forecasted marketing expenses, which NECA calculated to be approximately seven cents (\$0.07) per minute.[2] We then estimated the costs that NECA had excluded from the forecasts of individual providers that the providers did not dispute in their comments in response to the Commission's Public Notice of May 2, 2007 (DA 07-1978). In total, we believe these adjustments would amount approximately to twenty-seven cents (\$0.27).

The third level rate of \$6.30 was selected because it represents a significant reduction from the second level, which will further encourage VRS providers to become more efficient as they handle greater volumes of traffic. The disparity between the second and third rate levels, however, is not so significant that it would discourage VRS providers with several hundred thousand minutes of use per month to continue to expand the reach of their service to new deaf users.

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[1] Dr. Gregory Rosston, "An Analysis of VRS Industry Structure and Interoperability," at 6 (May 16, 2007), Attachment B to Declaration of Cheryl L. Parrino, appended to Comments of Sorenson Communications, Inc., CG Docket No. 03-123 (May 16, 2007).

[2] National Exchange Carrier Association, "Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimates" at 20, attached to letter from John Ricker, NECA, to Marlene H. Dortch, FCC, CG Docket No. 03-123 (May 1, 2007).

The minutes of use proposed for each rate level reflect a reasonable range of usage, beginning with a relatively small amount at the initial rate level, moving to a larger volume of minutes at the second rate level, and ending with the lowest rate level for the largest monthly volumes of use. As a VRS provider's volume in a month crosses each threshold, its per-minute compensation will decline, consistent with the theory that there are some scale economies associated with the provision of VRS. The three levels of minutes in the proposal also reflect the VRS marketplace in that, among the current providers, there are several new entrants and small providers, some more established providers with larger volumes of minutes per month, and some large providers with even higher volumes of minutes per month.[3]

Each of the proposed rates would be subject to the price cap plan that Snap, Sorenson, and Sprint Nextel (along with CAC, CSD, GoAmerica, and Hands On) proposed in their comments in the rulemaking proceeding last year. Specifically, for the next three rate years, the plan assumes that providers will be able to improve their efficiency by no less than the rate of inflation, notwithstanding the widespread recognition that the ongoing growth in VRS usage will put upward pressure on the cost of interpreters. In price cap terms, the "X factor" under this plan would be set equal to inflation (as measured by the GDP-PI) for each rate year and, consequently, the reimbursement rate for VRS will decline in "real" terms relative to inflation over the three-year term. In addition, each of the tiered rates would be reduced annually by 0.5 percent (0.005), which would further strengthen the efficiency incentives created by the proposed plan. Finally, VRS providers would have the ability to seek exogenous adjustments to the capped rates if providers are required during the term of the plan to incur certain costs beyond their control. For example, if the FCC were to mandate that VRS providers implement a 911 solution during the term of the plan, providers would have the right to seek an upward adjustment to the tiered rates. Such requests, of course, would be subject to the Commission's review and approval. At the end of the three-tear term, the Commission would undertake a comprehensive performance review of the plan.

The three-tier proposal described above would eliminate the need for VRS providers to submit annually forecasted cost information, although NECA would still need to determine the expected demand in the coming rate year in order to calculate the size of the VRS fund. Snap, Sorenson, and Sprint Nextel recognize, however, that the Commission likely will want to obtain data during the period the plan is in effect to assess whether the VRS industry under the new regulatory methodology continues to advance the statutory objectives of the program. We outline below several different types of

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[3] Snap, Sorenson, and Sprint Nextel also stated that they had presented the proposal to a group of other VRS companies that have proposed a tiered rate structure, including CSDVRS, HOVRS, GoAmerica, and CAC. Snap, Sorenson, and Sprint Nextel informed the staff that, as a result of that presentation, both groups appear to agree on the need for three tiers and on the rate levels for each tier, but the other group was still considering the number of minutes that should be included in each tier.

information that the Commission and/or NECA could compile through annual data submissions by the VRS providers (some of which may require confidential treatment) and otherwise that would assist the agency in making that assessment:

- **Growth in VRS Penetration:** One possible way to measure this would be to aggregate each provider's total minutes of VRS use in the immediately preceding calendar year and compare that total with total VRS minutes in previous years. To the extent that average monthly VRS use per customer tends to be relatively constant, these comparisons would indicate the rate at which new VRS users are being added. In addition, the demand data would show the relative changes in the providers' shares of VRS usage from year to year. That information could be relevant to a Commission assessment of the effectiveness of pro-competition and interoperability VRS policies. Additional data that providers could supply to assist in this regard might include: (1) the total number of VRS calls received in the immediately preceding calendar year; and (2) the total number of new videophones installed and/or the total number of new VRS user profiles created in the immediately preceding calendar year. In each case, the data for the immediately preceding calendar year could be compared to the data for the previous year. It is important to recognize, however, that not every VRS provider supplies videophones, and not every VRS provider maintains user profiles.

- **ASL Interpreter Pool:** One possible way to assess the state of the pool of available ASL interpreters is to compare the estimate total number of interpreters employed by the VRS industry during the immediately preceding calendar year with the total estimated number of interpreters available to be hired by providers and compare that number with the ratio in previous years. This information would enable the Commission to track over time the increase in the number of interpreters employed by VRS providers and their share of the total interpreter pool.

- **Growth in ASL Interpreters:** One possible way to assess the rate at which new qualified ASL interpreters will become available is to determine the number of ASL interpreter training programs in service nationwide during the immediately preceding calendar year and develop an estimate of the annual increase in qualified interpreters that those programs likely produced in the immediately preceding calendar year compared with previous years.

- **Industry Structure:** The FCC potentially could monitor changes in the structure of the VRS industry by determining the number of providers that entered and exited (through merger or otherwise) the VRS business during the previous year.

- **Service Quality:** The Commission could compile information from a variety of sources that would indicate trends in VRS service quality, including (1) providers' overall service quality (*e.g.*, calculate for the immediately preceding calendar year the number of FCC complaints filed against VRS providers as a percentage of the total number of VRS minutes and compare that ratio with the ratios in prior years); (2) providers' improvement (or decline) in average speed-of-answer over the past year; and (3) service innovations or improvements (*e.g.*, development of E911 solutions or other waived requirements) deployed in the immediately preceding calendar year.

As to cost information, the Commission and NECA currently have cost information for a base year (2006) that was submitted in connection with the filing for the 2007-08 rate year. Because the VRS rates under the proposed approach no longer would be revised annually on the basis of forecasts of selected categories of costs, there would be no need for providers to develop such estimates. In addition, the Commission's principal interest on a going-forward basis should be in monitoring trends in the most significant categories of compensable costs, namely, costs associated with interpreters, the single largest compensable input cost, and costs incurred in outreach activities, which are essential for spreading the reach of VRS to a wider portion of the deaf community. Thus, we suggest that each provider submit annually to NECA the following cost-related data:

- the percentage change in average wages paid to full-time and part-time interpreters between the immediately preceding calendar year and the previous calendar year;
- the percentage change in total costs (*i.e.*, health benefits, retirement) related to interpreters between the immediately preceding calendar year and the previous calendar year; and
- the percentage change in total costs related to outreach between the immediately preceding calendar year and the previous calendar year.

In addition to this cost information, each provider would also continue to provide NECA with its historic and projected demand data so that NECA could develop a reasonable estimate of the Interstate TRS Fund size for the coming rate year.

Pursuant to the Commission's rules, this letter is being submitted for inclusion in the public record of the above-referenced proceeding.

Respectfully submitted,

cc: Nicholas Alexander
Scott Bergmann
Scott Deutchman
Ian Dillner
John Hunter
Nicole McGinnis
Catherine W. Seidel